



## **DEPARTMENT OF LABOR**

### **Employment and Training Administration**

#### **Update to Appendix A to the Preamble—Education and Training Categories by O\*NET—SOC Occupations; Labor Certification for Permanent Employment of Immigrants in the United States and Procedures to Establish Job Zone Values when O\*NET Job Zone Data Are Unavailable**

**AGENCY:** Employment and Training Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce updates to Appendix A to the Preamble—Education and Training Categories by Occupational Information Network (O\*NET)—Standard Occupational Classification (SOC) Occupations. Appendix A is a list of professional occupations that serves as a guide for employers to distinguish between professional and non-professional occupations in order to comply with the professional recruitment requirements of the permanent labor certification (PERM) program. In addition, this notice announces standard procedures for establishing Job Zones for a SOC code and occupational title in situations where O\*NET Job Zone data are not yet available as O\*NET transitions to the 2018 SOC system. These actions, updating Appendix A and establishing standard procedures for Job Zone values where O\*NET Job Zone data are unavailable for certain occupations, will allow ETA to maintain a more comprehensive and current list of occupations and provide additional clarity to employers and the public regarding the appropriate education requirements and Job Zone value for each SOC code and occupational title.

**DATES:** This Notice is effective on [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room N-5311, Washington, DC 20210, Telephone: (202) 693-8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Background**

The Immigration and Nationality Act (INA), as amended, assigns responsibilities to the Secretary of Labor (Secretary) relating to the entry and employment of certain categories of immigrants and nonimmigrants. The INA prohibits the admission of certain employment-based immigrants unless the Secretary has certified that (1) there are not sufficient workers who are able, willing, qualified and available at the time of application for a visa and admission to the United States and at the place where the foreign worker is to perform such skilled or unskilled labor, and (2) the employment of such foreign worker will not adversely affect the wages and working conditions of workers in the United States similarly employed.<sup>1</sup> The Secretary has delegated the responsibilities under the INA to administer the PERM program at 20 CFR part 656 to the Assistant Secretary for ETA, who in turn has delegated that authority to OFLC.<sup>2</sup>

**II. Appendix A**

**A. Origin and Purpose of Appendix A**

On December 27, 2004, the Department published the Final Rule, *Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System*, 69 FR

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<sup>1</sup> See 8 U.S.C. 1182(a)(5)(A); 8 U.S.C. 1101(a)(15)(E)(iii), (H)(i)(b), (H)(i)(b)(1).

<sup>2</sup> See Secretary's Order 06-2010 (Oct. 20, 2010).

77326 (December 27, 2004) (Final Rule), revising the regulations at 20 CFR part 656. The Final Rule requires employers to conduct recruitment of U.S. workers before filing their applications under the PERM program and introduced different recruitment requirements for non-professional occupations and professional occupations.<sup>3</sup> In the preamble to the Final Rule, the Department included an appendix titled Appendix A, which listed O\*NET occupations using BLS 2000 SOC codes and titles for which a bachelor's or higher degree is a customary requirement, and for which the employer must recruit under the standards for professional occupations under 20 CFR 656.17(e)(1). The Department explained that the list was intended to identify professional occupations the Department considered appropriate for recruiting under the standards for professional occupations and offered the list as a guide for employers to determine recruitment requirements.<sup>4</sup>

The Department created Appendix A using a list of occupations that BLS developed based on the usual education and training requirements for the occupations.<sup>5</sup> As the Department explained, each of the occupations listed in Appendix A was assigned a BLS education and training category (E&TC) code, which indicated the “most significant source of level of education or training” required by an occupation.<sup>6</sup> In 2010, BLS ceased publishing the education requirements

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<sup>3</sup> The term “professional occupation” is defined as “an occupation for which the attainment of a bachelor's or higher degree is a *usual education requirement*.” 20 CFR 656.3 (emphasis added). As explained in the Final Rule, and codified at 20 CFR 656.3, it is not a requirement that the foreign worker-beneficiary listed on an application possess a bachelor's or higher degree themselves for the job opportunity to meet the definition of a professional occupation. *Id.*; 69 FR 77326, 77345-46 (Dec. 27, 2004). However, if an employer is willing to accept work experience in lieu of a bachelor's or higher degree, such work experience “must be attainable in the U.S. labor market and must be stated on the application form.” 20 CFR 656.3. Similarly, if an equivalent foreign degree is acceptable, this also “must be clearly stated on the *Application for Permanent Employment Certification* form.” *Id.* In comparison, the term “nonprofessional occupation” means “any occupation for which the attainment of a bachelor's or higher degree is not a usual requirement for the occupation.” *Id.*; 69 FR 77326, 77345-46.

<sup>4</sup> See 69 FR 77326, 77345-46 (“The primary purpose of the list of occupations is to provide employers with the necessary information to determine whether to recruit under the standards provided in the regulations for professional occupations or for nonprofessional occupations.”).

<sup>5</sup> See *Notice of Proposed Rulemaking, Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System*, 67 FR 30466, 30471 (May 6, 2002).

<sup>6</sup> See *id.*; Comment Request, 75 FR 60139, 60140 (Sept. 29, 2010). See also *Employment Projections through the Lens of Education and Training*, 15, Monthly Labor Review: April 2012, Bureau of Labor Statistics (explaining the reasons for development of the current education and training system and the differences between the old and new systems), available at <https://www.bls.gov/opub/mlr/2012/article/employment-projections-through-the-lens-of-education-and-training.htm>; *Employment Projections: Methods*, Bureau of Labor Statistics (explaining that the current system “replaced [the] earlier system that was used between 1995 and 2008” and the “two systems are not comparable”), available at <https://www.bls.gov/emp/documentation/education/tech.htm>.

for SOC codes under the E&TC system. However, BLS now publishes the typical entry-level educational requirements for SOC codes in conjunction with the annual wage estimates based on the Occupational Employment and Wage Statistics (OEWS) wage survey.<sup>7</sup>

#### B. Use of Appendix A

OFLC processes the PERM labor certification application, Form ETA-9089, *Application for Permanent Employment Certification*,<sup>8</sup> and uses Appendix A to determine whether the SOC code assigned to the requested job opportunity<sup>9</sup> in the application generally requires a bachelor's degree for entry, such that the employer must conduct professional recruitment under 20 CFR 656.17(e)(1).<sup>10</sup> The absence of an occupation from Appendix A is not dispositive of an employer's recruitment obligations. However, if the occupation is not listed in Appendix A, as updated and posted annually as notice(s) on the OFLC website, and it does not otherwise meet the definition of a professional occupation under 20 CFR 656.3, the employer is not required to conduct professional recruitment.<sup>11</sup>

#### C. Availability of New Education Data and the Department's Decision to Update Appendix A

ETA believes it is necessary to publish this notice to provide the best available information to guide employers in determining recruitment requirements under the PERM program, especially as the list of occupations in Appendix A has become outdated. For example, an increasing

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<sup>7</sup> BLS's OEWS survey was named the Occupational Employment Statistics survey prior to March 31, 2021. *See* <https://www.bls.gov/oes/home.htm>.

<sup>8</sup> The current form title is ETA Form 9089, but the Department recently submitted proposed changes to the form to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. *See* Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Permanent Employment Certification, 86 FR 22714 (Apr. 29, 2021).

<sup>9</sup> Generally, the SOC code assigned to an employer's job opportunity is indicated in the Prevailing Wage Determination issued by OFLC's National Prevailing Wage Center.

<sup>10</sup> OFLC's National Prevailing Wage Center (NPWC) also consults the list of occupations in Appendix A to determine the education and experience norms for occupations when it processes prevailing wage determination requests, Form ETA-9141, *Application for Prevailing Wage Determination*. Specifically, NPWC uses the E&TC codes on the list of occupations in its determination of prevailing wages by comparing an employer's education requirement listed on the Form ETA-9141 with the education requirement indicated on the E&TC code for that occupation. Employment and Training Administration; Prevailing Wage Determination Policy Guidance, Nonagricultural Programs (Revised Nov. 2009), available at [https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>11</sup> *See* 20 CFR 656.17(e)(2) (recruitment obligations for nonprofessional occupations); 69 FR 77326, 77388 (listing definitions of "professional occupation" and "nonprofessional occupation").

number of occupational codes are no longer listed by the same SOC code and occupational title in Appendix A due to updates to the SOC manual in 2010 and 2018.<sup>12</sup> Accordingly, it had become necessary for OFLC to develop a method to crosswalk occupations (*i.e.*, connecting an outdated occupation to the O\*NET database to find an occupation that best matches the job opportunity indicated in the employer's application). However, with the BLS publication of the typical entry-level educational requirement in conjunction with its annual OEWS wage estimates for the SOC codes and titles, ETA is now able to provide notice of corresponding updates to Appendix A, which are based on occupational and education data from BLS, and maintain a more current list of professional occupations that provides greater clarity to the public on the appropriate education requirements for each occupation.<sup>13</sup> ETA intends to annually review the BLS occupational and education data with the annual OEWS wage estimates each May and, as appropriate, publish a full update to Appendix A consistent with the BLS data, even if BLS data have not changed from the previous year.

#### D. Effective Date of the Updated List of Occupations in Appendix A

The updated list of occupations in Appendix A will be published on OFLC's website on or before June 30, 2022, along with the wage data applicable in the new wage year, which starts July 1, 2022 and continues until June 30, 2023. Employers will be able to rely on the list of occupations and the education requirements associated with the occupations in Appendix A that OFLC publishes each year on its website. In order to minimize the impact of newly-added professional occupations and to ensure appropriate notice for employers, including those engaged in any pre-filing recruitment under 20 CFR 656.17(e), professional recruitment obligations under 20 CFR 656.17(e)(1) will generally not apply to professional occupations that are newly added to the list of professional occupations in Appendix A unless OFLC has both: (1) published the occupation on a list of professional occupations as a notice on the OFLC website;

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<sup>12</sup> See, *e.g.*, Standard Occupational Classification Manual (2018), *available at* [https://www.bls.gov/soc/2018/soc\\_2018\\_manual.pdf](https://www.bls.gov/soc/2018/soc_2018_manual.pdf).

<sup>13</sup> See <https://www.bls.gov/oes/additional.htm>.

and (2) OFLC’s National Prevailing Wage Center (NPWC) has assigned the SOC code in connection with the issuance of a prevailing wage determination under 20 CFR 656.40. As the Department explained in the Final Rule, “[t]he primary purpose of the list of occupations [in Appendix A] is to provide employers with the necessary information to determine whether to recruit under the standards provided in the regulations for professional occupations or for nonprofessional occupations.” 69 FR 77326, 77346. However, “[e]mployers that conduct more recruitment than is required will not have their applications denied for that reason. Employers filing applications involving nonprofessional occupations are free to recruit under the requirements for professional occupations if they believe by so doing it will yield more applications from willing, able, and qualified U.S. workers.” *Id.* Accordingly, ETA believes that providing this notice to annually review and publish a new list of professional occupations in Appendix A on OFLC’s website—even when BLS data have not changed from the previous year—will provide employers with the best available information to guide them in determining recruitment requirements and wage obligations. Specifically, OFLC will use BLS’s latest occupational and education data annually, beginning in the July 2022 through June 2023 wage year, when the wages are updated based upon the same BLS release cycle.

### **III. Job Zones**

#### **A. O\*NET Five Job Zones**

A Job Zone is a group of occupations that are similar in the amount of (1) education; (2) related experience; and (3) on-the-job training that is needed to perform the work. O\*NET classifies occupations into one of five Job Zones, ranging from little or no preparation to an extensive amount of preparation needed to perform the job. Job Zone One occupations require little or no preparation to perform the job. Job Zone Two occupations require some preparation. Job Zone Three occupations require medium preparation. Job Zone Four occupations require

considerable preparation, and Job Zone Five occupations require extensive preparation to perform the job.<sup>14</sup>

More specifically, Job Zone One occupations may require: (1) a high school diploma or GED certificate; (2) minimal work-related skill, knowledge, or experience; and (3) a few days to a few months of job training. Examples of Job Zone One occupations include: dishwashers, sewing machine operators, and landscaping and groundskeeping workers. Job Zone Two occupations usually require: (1) a high school diploma; (2) some previous work-related skill, knowledge, or experience; and (3) a few months to one year of working. Examples of Job Zone Two occupations include: counter and rental clerks, customer service representatives, and security guards. Job Zone Three occupations usually require: (1) training in vocational schools, related on-the-job experience, or an associate's degree; (2) previous work-related skill, knowledge, or experience; and (3) one or two years of training involving both on-the-job experience and informal training. These occupations usually involve using communication and organizational skills to coordinate, supervise, manage, or train others. Examples of Job Zone Three occupations include: electricians, court reporters, and medical assistants. Job Zone Four occupations usually require: (1) a four-year bachelor's degree; (2) considerable amount of work-related skill, knowledge, or experience; and (3) several years of work-related experience, on-the-job training, and/or vocational training. These occupations involve coordinating, supervising, managing, or training others. Examples of Job Zone Four occupations include: sales managers, database administrators, and graphic designers. Job Zone Five occupations usually require: (1) graduate school; (2) extensive skill, knowledge, and five or more years of experience; and (3) some on-the-job training, but most of these occupations assume that the person will already have the required skills, knowledge, work-related experience, and/or training. These occupations often

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<sup>14</sup> See O\*NET OnLine Help: Job Zones, *available at* <https://www.onetonline.org/help/online/zones>.

involve coordinating, training, supervising, or managing the activities of others. Examples of Job Zone Five occupations include: pharmacists, lawyers, and neurologists.<sup>15</sup>

### B. Procedures for Establishing Job-Zone Values

OFLC uses the O\*NET Job Zone assigned to an occupation to determine whether the experience the employer requires meets, exceeds, or falls below requirements typical to the occupation in which the employer's job opportunity is classified. While O\*NET transitions to the 2018 SOC occupations, there are many frequently used occupations where the O\*NET Job Zone is not yet available. Until O\*NET completes its transition, OFLC will use the following standard procedures to set Job Zone values for occupations without O\*NET Job Zone data.

First, when there is an existing O\*NET Job Zone for a 2018 SOC occupation, OFLC will use the Job Zone from the O\*NET 2018 SOC occupation.

Second, when there is no O\*NET Job Zone for the 2018 SOC occupation, but there is an O\*NET Job Zone for the 2010 SOC occupation, OFLC will use the Job Zone from the O\*NET 2010 SOC occupation.

Third, when there is no O\*NET Job Zone for either the 2018 SOC occupation or the 2010 SOC occupation, OFLC will first examine the corresponding broad occupation<sup>16</sup> to determine if the broad occupation contains detailed occupations with O\*NET Job Zones.<sup>17</sup> OFLC will calculate the Job Zones by averaging the O\*NET Job Zones of the detailed occupations within the broad occupation. For example, since there is neither O\*NET Job Zone for 2018 SOC 11-3013 – Facilities Managers nor O\*NET Job Zone for 2010 SOC 11-3011 – Administrative

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<sup>15</sup> *Id.*

<sup>16</sup> SOC occupations are organized into a tiered system with four levels of aggregation: (1) major group; (2) minor group; (3) broad occupation; and (4) detailed occupation. Each lower level of detail identifies a more specific group of occupations. The 2018 SOC contains 23 major groups, which are broken into 98 minor groups, 459 broad occupations, and 867 detailed occupations, of the latter of which have the highest level of specification. The following is an example of the four levels of aggregation: 29-0000 Healthcare Practitioners and Technical Occupations (major group); 29-1000 Healthcare Diagnosing or Treating Practitioners (minor group); 29-1020 Dentists (broad occupation); and 29-1022 Oral and Maxillofacial Surgeons (detailed occupation). *See* Standard Occupational Classification Manual (2018), *available at* [https://www.bls.gov/soc/2018/soc\\_2018\\_manual.pdf](https://www.bls.gov/soc/2018/soc_2018_manual.pdf); *see also* The O\*NET SOC Taxonomy, *available at* <https://www.onetcenter.org/taxonomy.html> (providing additional information on classification).

<sup>17</sup> *See* Updating the O\*NET®-SOC Taxonomy: Incorporating the 2018 SOC Structure - Summary and implementation, at 6-7, *available at* [https://www.onetcenter.org/dl\\_files/Taxonomy2019\\_Summary.pdf](https://www.onetcenter.org/dl_files/Taxonomy2019_Summary.pdf).



Services Manager, OFLC will use the average O\*NET Job Zones for the Broad Occupation 11-3010 – Administrative Services and Facilities Managers.

Lastly, where there is no O\*NET Job Zone for either the 2018 SOC occupation or the 2010 SOC occupation, and the broad occupation does not have detailed occupations with O\*NET Job Zones, OFLC will calculate the Job Zone by averaging the O\*NET Job Zone of the detailed occupations within the minor group. For example, since the Broad Occupation 15-2051 – Data Scientists does not have detailed occupations with O\*NET Job Zones, OFLC will use the average O\*NET Job Zones for the Minor Group 15-2000 – Mathematical Science Occupations.

OFLC intends to use these standard procedures for occupations that do not have O\*NET Job Zone data beginning in the July 2022 through June 2023 wage year when the wages are updated based upon the same BLS release cycle.

Angela Hanks,

Acting Assistant Secretary of the Employment and Training Administration.

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